IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No.482/2005

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	:	Court's or Judge's orders

CORAM : A.P. Lavande, J.
Dated : October 20 , 2006

Heard Mr. S.D. Deshpande, learned counsel for the appellants and Mr. Kotwal, learned counsel for respondent nos. 1 to 9 and 11 to 16.

This second appeal is directed against judgment and decree dated 17.11.2004 passed by 14th Adhoc Additional District Judge, Nagpur in Regular Civil Appeal No.257/1994 dismissing the appeal filed by the appellants-defendant nos. 1 to 4 against judgment and decree dated 27.7.1992 passed by 5th Joint Civil Judge, Jr. Dn. Nagpur in Regular Civil Suit No.669/1990 filed by the

respondent nos. 1 to 16 in which respondent no.17 was defendant no.5.

The plaintiffs filed the above suit for declaration that they are the owners of 1/3rd share in the suit field. The contention of plaintiffs is that the suit field was purchased by the father of plaintiff no.1 namely Khushalji in the year 1935 in the name of his elder son Kashinath who was minor at the time of purchase and as such the consideration was paid by Khushalji and, therefore, it was the absolute property of Khushalji in which the plaintiffs have 1/3rd share. The suit was contested by defendants who denied the title of the plaintiffs and contended that the suit field was purchased by Kashinath out of his own funds and, therefore, he was the sole owner of the suit field.

The trial Court upon appreciation of the evidence held that the property was purchased by Khushalji in the name of his minor son

Kashinath and the consideration was paid by Khushalji and as such it was not self-acquired property of late Kashinath. Consequently, the trial Court held that the plaintiffs were entitled for declaration that they were the owners of 1/3rd share in the suit field and consequently, granted declaration, partition and perpetual injunction. The lower appellate Court in appeal preferred by defendant nos. 1 to 4 held that Khushalji had purchased the suit field from his own funds in the name of his son who was minor at the time of execution of the sale deed dated 30th April 1935. The lower appellate Court held that the suit field is the joint family property of the plaintiffs and defendants and negatived the defence of the defendants that it was self-acquired property of deceased Kashinath. Consequently, the lower appellate Court maintained the decree passed by the trial Court.

Mr. Deshpande, learned counsel appearing for the appellants submitted that both the Courts below have erred in law in holding that the suit property was purchased by Khushalji out of his own funds in the name of deceased Kashinath. He further submitted that the findings recorded by the trial Court, which have been confirmed by the lower appellate Court are totally perverse and, therefore, warrant interference in second appeal.

Per contra, Mr. Kotwal, learned counsel for respondent nos. 1 to 9 and 11 to 16 supported the impugned judgments passed by both the Courts below.

I have considered the submissions made by learned counsel appearing for the parties. I am unable to accept the submission of Mr. Deshpande that the finding recorded given by the trial Court and confirmed

by the lower appellate Court that Khushalji purchased the property from his own funds in the name of his minor son Kashinath is perverse. This finding, in my opinion, is passed by both the Courts upon proper appreciation of the evidence led by the parties. Kashinath was minor at the time of purchase of suit field in his name and did not have funds to pay the consideration for purchase of the suit field. Therefore, the finding given by the trial Court and confirmed by the appellate Court cannot be faulted. There are concurrent findings of fact recorded by both the Courts below and, therefore, no interference is called for. In any case, no substantial question of law is involved in this appeal. Hence, the appeal is rejected.

JUDGE

A.